Ungku Sulaiman bin Abd Majid & Anor v Pengarah Tanah dan Galian Johor & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01()–4 OF 2010(J)
ZULKELFI, RAUS SHARIF AND ABDULL HAMID EMBONG FCJJ
10 MAY 2011

Land Law — Acquisition of land — Validity of acquisition — State government on Sultan's orders redeemed and acquired charged land of deceased — Beneficiaries of deceased's estate not informed of or compensated for acquisition — Whether action by administrators of estate to invalidate acquisition and obtain compensation time-barred

The appellants were administrators of the estate of one Ungku Abdullah who died in March 1893. Three years before his death Ungku Abdullah had charged his land ('the property') in Johore Bahru to a chettiar. In 1895 the Johore state government redeemed the property for a sum of RM8,000 on the instructions of the then Sultan of Johore, acquired it and then transferred it to the federal government to be used for a telecoms exchange building. The appellants said the acquisition without notice and without payment of compensation and/or damages to the beneficiaries of the estate, who were 624 in number, was bad in law. The appellants wanted the property to be returned to them or, in lieu thereof, compensation and/or damages to be paid to them and all the beneficiaries. The appellants claimed the acquisition was made under s 54 of the Land Enactment of Johore 1950 (No 1) ('the Enactment'). The respondents contended that the beneficiaries were time-barred from making any claim to the property. The High Court, at the first instance, found for the appellants holding the redemption, acquisition and transfer of the property to the federal government were all bad in law. The state government was ordered to compensate the appellants and beneficiaries of the estate by way of damages. The court held that since the acquisition was made under a wrong section of the Enactment limitation did not apply. The court also said after the property was redeemed the state government held the title to the property in disregard to the legal rights of the beneficiaries of the estate. The respondents appealed the decision to the Court of Appeal which allowed their appeal. The Court of Appeal held the High Court was wrong to have assumed that the acquisition of the property in 1895 was made under the Enactment because as at 1910 there already existed in Johore a legislation pertaining to land. The court also said documentary evidence filed in the case showed that prior to 1910 the then Sultan of Johore or the state government had the legal capacity to hold lands for the state. The court held the appellants had failed to show that the redemption

was improper or that an alleged deprivation of title to the property had occurred. The appellants appealed the decision to the Federal Court.

Held, dismissing the appeal with costs:

(1) In charging the property Ungku Abdullah had indirectly appointed the chettiar to be his attorney and having the authority to sell the property if the debt was not paid. When the state government settled the debt the property lawfully became the property of the state government (see para 18).

(2) The property was restored to the state government when it was redeemed on the instructions of the then Sultan of Johore in 1895 (see para 18).

(3) If Ungku Abdullah's beneficiaries contended that the property was redeemed without their consent they should have applied to set aside the redemption then. They failed to do so and consequently the state government became the owner of the property. The redemption took place more than 115 years ago and it was too late now for them to challenge the redemption as limitation had set in (see para 19).

(4) The acquisition of the property was not null and void. Section 54 of the Enactment was invoked only for the purpose of rectification of the title in order for the property to be vested with the state government. It was not for the acquisition of the property. Thus the reference to s 54 of the Enactment by the appellants to ground their claim was wrong (see paras 16 & 17).

(5) The appellants failed to show the state government's redemption of the property in 1895 was wrong in law and in breach of the laws in force at the material time. Thus there was no basis to hold the transfer of the property by way of redemption by the state government was a nullity (see para 20).

[Bahasa Malaysia summary

Perayu-perayu adalah pentadbir-pentadbir kepada harta pusaka Ungku Abdullah yang telah meninggal dunia pada Mac 1893. Tiga tahun sebelum kematiannya, Ungku Abdullah telah mencagarkan tanah ('harta tersebut') di Johor Bahru kepada seorang chettiar. Pada tahun 1897, Kerajaan Negeri Johor telah menebus harta tersebut dengan jumlah RM8,000, atas arahan Sultan Johor ketika itu, mengambilnya dan kemudian memindah miliknya kepada kerajaan persekutuan untuk digunakan sebagai bangunan pertukaran telekomunikasi. Perayu-perayu menghujahkan bahawa pengambilan tersebut adalah tanpa notis dan tanpa bayaran pampasan dan/atau kerugian kepada benefisiari-benefisiari harta pusaka, yang berjumlah 624 orang, adalah tidak sah di sisi undang-undang. Perayu-perayu mengehendaki agar harta tersebut dipulangkan kepada mereka atau, sebagai ganti, pampasan dan/atau kerugian

dibayar kepada mereka dan kesemua benefisiari. Perayu-perayu menghujahkan bahawa pengambilan dibuat di bawah s 54 Enakmen Tanah Johor 1950 (No 1) ('Enakmen tersebut'). Responden-responden menghujahkan bahawa benefisiari-benefisiari telah terhalang oleh had masa daripada membuat sebarang tuntutan ke atas harta. Mahkamah Tinggi, pertamanya, memutuskan bahawa penebusan, pengambilan dan pindah milik harta tersebut tidak sah di sisi undang-undang. Kerajaan negeri diperintahkan untuk memampas perayu-perayu dan benefisiari-benefisiari harta melalui gantirugi. Mahkamah memutuskan bahawa memandangkan pengambilan dibuat di bawah seksyen yang salah di bawah Enakmen, had masa tidak terpakai. Mahkamah juga memutuskan bahawa selepas harta tersebut ditebus, kerajaan negeri memegang hak milik harta tersebut tanpa mengira hak undang-undang benefisiari-benefisiari ke atasnya. Responden merayu keputusan tersebut kepada Mahkamah Rayuan yang membenarkan rayuan. Mahkamah Rayuan memutuskan Mahkamah Tinggi terkhilaf dengan menyangka bahawa pengambilan harta tersebut pada 1895 dibuat di bawah Enakmen tersebut kerana pada 1910 telah wujud di Johor suatu undang-undang berkenaan tanah. Mahkamah juga memutuskan keterangan dokumentari yang difailkan di dalam kes menunjukkan bahawa sebelum 1910, Sultan Johor ketika itu atau kerajaan negeri mempunyai kapasiti sah untuk memegang tanah bagi negeri. Mahkamah memutuskan perayu-perayu telah gagal untuk menunjukkan penebusan adalah tidak wajar atau dakwaan halangan ke atas hak milik telah berlaku. Perayu-perayu merayu keputusan tersebut ke Mahkamah Persekutuan.

Diputuskan, menolak rayuan dengan kos:

(1) Dengan mencagarkan tanah tersebut, Ungku Abdullah telah secara tidak langsung melantik chettiar untuk menjadi wakil kuasa dan mempunyai autoriti menjual harta tersebut jika hutang tidak dibayar. Apabila kerajaan negeri menyelesaikan hutang, harta tersebut dengan sahnya menjadi harta kerajaan negeri (lihat perenggan 18).

(2) Harta tersebut dikembalikan kepada kerajaan negeri apabila ia tidak ditebus atas arahan Sultan Johor ketika itu pada 1895 (lihat perenggan 18).

(3) Jika benefisiari-benefisiari Ungku Abdullah mendakwa harta tersebut telah ditebus tanpa kebenaran mereka, mereka sepatutnya memohon untuk mengenepikan penebusan ketika itu. Mereka gagal untuk berbuat demikian dan akibatnya, kerajaan negeri menjadi pemilik harta tesebut. Penebusan berlaku lebih 115 tahun lalu dan sudah terlambat sekarang untuk mereka mencabar penebusan kerana berlakunya halangan.

(4) Pengambilan harta tersebut bukan batal dan bukan tidak sah. Seksyen 54 Enakmen hanya digunakan untuk tujuan pembetulan hak milik bagi meletakhak harta kepada kerajaan negeri. Ia bukan untuk pengambilan

harta tersebut. Oleh itu, rujukan kepada s 24 Enakmen oleh perayu-perayu sebagai asas tuntutan mereka adalah salah (lihat perenggan 16 & 17).

(5) Perayu-perayu gagal menunjukkan penebusan harta tersebut oleh kerajaan negeri pada 1895 adalah salah di sisi undang-undang dan melanggari undang-undang yang berkuatkuasa pada masa material. Oleh itu, tiada asas untuk memutuskan bahawa pindah milik harta tersebut melalui penebusan oleh kerajaan negeri adalah tidak sah (lihat perenggan 20).]

Notes

For cases on validity of acquisition, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2318–2320

Cases referred to

Albion Hotel (Freshwater) Ltd v Silva and Another [2002] IRLR 200, EAT (refd)

Country Council of Hereford and Worcester, The v Neale [1986] ICR 471, HL (refd)

Hadmor Productions Ltd and others v Hamilton and another [1982] 2 WLR 322 (refd)

Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors [1995] 2 MLJ 213; [1995] 2 CLJ 900, CA (refd)

Terengganu Forest Product Sdn Bhd & Anor v Cosco Container Lines Co Ltd & Anor and other applications [2011] 1 MLJ 25; [2011] 1 CLJ 51, FC (refd)

Legislation referred to

Land Acquisition Act 1952

Land Enactment of Johore 1950 (No 1) ss 42, 54

Appeal from: Civil Appeal No J-01–33 of 2001 (Court of Appeal, Putrajaya)

Bastian Vendargon (PK Nathan and Anne Vendargon with him) (Bastian Vendargon) for the appellants.

Mohd Hafarizam Harun (Firoz Hussien Ahmad Jamaluddin, Cheng Mai and Syed Faisal Syed Abdullah with him) (State Legal Advisor's Office, Johor) for the respondents.

Raus Sharif FCJ (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal against the decision of the Court of Appeal, given on 19 August 2009 allowing the respondents' appeal. Leave to appeal was granted by this court on 7 April 2010 on the following questions:

Question 1

Is the period of time between the date of death of a person and the grant of letters of administration to his personal representatives, excluded from the calculation of any limitation period for bringing an action in court on behalf of the estate of that deceased person.

Question 2

When an act is a nullity, and that act is sought to be impugned by a declaration of rights in a court, is there a limitation period prescribed by any statute existing in Malaysia generally/specifically (and in the Unfederated Malay State of Johor) for the filing of an action?

Question 3

By the Land Enactment of Johore 1950 (No 1) can the state government acquire alienated lands pursuant to s 54 of the Enactment without first complying s 42 of the same Enactment.

Question 4

Was the law of adverse possession of lands in existence in the Unfederated Malay State of Johor in 1895? If the said law was in existence and applicable in Johor in 1895, does it apply to adverse possession merely of the land title/deeds, or can it only apply when adverse possession is in relation to the physical occupation and control of the subject lands?

[2] For convenience the parties will be referred to as the plaintiffs and defendants as in the trial court.

BACKGROUND FACTS

[3] The plaintiffs are the co-administrators of the estate of the late Ungku Abdullah. The estate was in relation to a property located in Johor Bahru measuring 6 acres O road 30 poles held under Geran 158, Lot 129, Bandaran Johor Bahru ('the said property').

[4] Ungku Abdullah died on 23 March 1893. Before his death, Ungku Abdullah had charged the said property to a chettiar in 1890. The property was later redeemed by Johor State Government in 1895 ('state government') on the instruction of His Royal Highness the Sultan of Johor then. The said property was redeemed for the sum of RM8,000. The said property was subsequently reserved by way of a *gazette* notification vide GN 386 dated 10 May 1951 as a 'Telecom Exchange Building Maintained by The Controller of Telecoms Johor'.

[5] By way of petition for a letter of administration dated 26 June 1996, the Johor Bahru High Court appointed both the plaintiffs, as co-administrators of the estate. There were 624 beneficiaries to the estate.

[6] It is the plaintiffs' case that the said property was acquired by the state government under s 54 of the Land Enactment of Johore 1950 (No 1) ('1950 Enactment') without informing and without paying any compensation and/or damages to the surviving beneficiaries of the late Ungku Abdullah. The plaintiffs claimed that the acquisition of the said property by the state government was without basis and not valid in law. Therefore, the plaintiffs claimed against the state government for the return of the said property and in the event that this could not be done, they claimed compensation and/or damages to be accorded to them together with other beneficiaries whose rights had been denied.

[7] The defendants on the other hand claimed that in 1895 the said property was acquired by the state government after the state government had redeemed the said property on the orders of His Royal Highness, the Sultan. Thereafter, the said property was transferred to the federal government to be used by Controller of Telecoms, Johor. Thus, it is the defendants' case that the beneficiaries of the late Ungku Abdullah were barred by the law of limitation from making any claim for the said property. The stand taken by the state government was illustrated in a letter written by the Johor State Legal Advisor dated as far back as 22 August 1972 to one of the beneficiaries of Ungku Abdullah which reads:

> Per: Menuntut bayaran ganti-rugi atas Geran Melayu No. 158 Bandar Johor Bahru
>
> Surat Ungku bertarikh 22 Ogos, 1972 telah patek terima.
>
> 2. Patek dukacita menyatakan bahawa setelah patek siasat perkara ini, patek dapati tanah tersebut telah menjadi hak Kerajaan. Almarhom Ungku Abdullah telah menggadaikan tanah itu kepada sa-orang Chetti dalam tahun 1890, dan pada 23 Mac 1893 telah mangkat. Dalam tahun 1895 Kerajaan telah menebus gadaian itu. Kerajaan telah mengambil aleh tanah itu menjadi hak Kerajaan dan samenjak dari itu tidak ada apa-apa tindakan diambil untok meminta balek tanah itu daripada Kerajaan.
>
> 3. Di-masa ini tindakan Mahkamah ke-atas Kerajaan tidak boleh di-ambil oleh kerana tindakan itu akan di-halang oleh undang-undang batasan guaman (Limitation).
>
> (MOHD. EUSOFF BIN CHIN)
>
> Penasehat Undang2 Negeri, Johor.

THE HIGH COURT

[8] The learned High Court judge found in favour of the plaintiffs and declared that:

(a) the redemption of the said property by the state government in 1895 and the acquisition thereof was illegal;

(b) the acquisition by the state government under s 54 of the 1950 Enactment was null and void;

(c) the transfer of the said property by the state government to the federal government was illegal and void under the law; and

(d) in view of the fact that the telecommunication department is currently sited on the said property, the state government is to compensate the plaintiffs and the beneficiaries by way of damages to be assessed by the senior assistant registrar.

[9] The learned High Court judge was of the view that the acquisition of the said property was null and void and hence 'the law of limitation plays no part at all'. The learned High Court judge gave his reasoning as follows:

> This was a case where the law of limitation plays no part at all. In 1895, the Johor State Government redeemed the said property it was an act of benevolence: very friendly, very helpful and very charitable gesture — notwithstanding the fact that the beneficiaries of the late Ungku Abdullah were not told nor were their consents obtained before the redemptions was undertaken. After the said property had been redeemed in 1895, the Johor State Government purportedly held the title to the said property in total disregard to the legal rights of the beneficiaries of the late Ungku Abdullah. Surely the beneficiaries of the late Ungku Abdullah ought to be recognised by the Johor State Government when the said property was redeemed in 1895; they should not be side stepped since they are entitled, in law, to the estate of the late Ungku Abdullah.

[10] The learned High Court judge further stated that:

> Since the said property was wrongly acquired under the wrong section of the Land Enactment (No 1), time remained at large and the law of limitation was inapplicable and it cannot govern, the outcome of the present case at all.

THE COURT OF APPEAL

[11] The Court of Appeal unanimously allowed the defendants' appeal. The Court of Appeal held, inter alia, as follows:

(a) The affidavit filed by the Assistant Director Lands and Mines, Johor, and the accompanying exhibits provided an amalgam of credible evidence that clarified the status of the said property. The historical perspective extracted from the State Constitution and the treatise of authors referred to also assisted to embellish the position that during the period preceding 1910, His Royal Highness Sultan Ibrahim or the state government possessed the legal capacity to hold lands for the state.

(b) The trial judge was in error in assuming that the land legislation

applicable in this case had to be the 1950 Enactment. This is because, the 1950 Enactment itself indicated that as at 1910 there was already in place a legislation pertaining to land. As the redemption took place in 1895, it was a fallacy to determine whether the 1950 Enactment was the appropriate legislation.

(c) The reference to s 54 of the 1950 Enactment was irrelevant. The section was only invoked by the state authority only for the purpose of rectification of the title that was to properly vest the said property to the state government. Therefore, the 1950 Enactment was wrongly considered to be applicable to determine the legality or otherwise of the alleged acquisition.

(d) The facts showed that the said property was redeemed in accordance with the law then in force and the plaintiffs had failed to adduce any evidence to show that the redemption was improper.

(e) On the totality of evidence the plaintiffs had failed on the balance of probabilities to prove that there had occurred an alleged deprivation of title to the said property. Their claim originated from a misconcieved position that s 54 of the 1950 Enactment was applicable.

THIS COURT

Submissions

[12] Before us, learned counsel for the plaintiffs submitted that there are three main issues identified and adjudicated upon by the learned High Court judge, namely:

(a) whether the state government could redeem the said property without the consent and instructions of the beneficiaries of the late Ungku Abdullah and whether such redemption was in accordance with the law and/or valid in law;

(b) whether the acquisition of the said property under s 54 of the 1950 Enactment was null and void; and

(c) whether the law of limitation could be applied in the present case when the said property was acquired under the wrong s of the 1950 Enactment.

[13] It was submitted that the learned High Court judge was right in his findings on the three issues. The Court of Appeal has therefore erred in reversing the findings of the learned High Court judge. It was also submitted that the Court of Appeal in deciding with the three issues also dealt with some other issues which were not raised, argued or submitted upon. Therefore, it was submitted that the Court of Appeal was in breach of the rule of natural justice

and procedural fairness. Basically, the complaints are these:

(a) The judgment contains material that was neither referred to nor raised by either party.

(b) The parties were never given an opportunity to submit on the various points addressed by the Court of Appeal. These points were never referred to nor raised in the first place by either party during proceedings.

(c) The matters raised were not found in the memorandum of appeal.

In support thereof, learned counsel referred to the following authorities: *Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors* [1995] 2 MLJ 213; [1995] 2 CLJ 900; *Hadmor Productions Ltd and Others v Hamilton and Another* [1982] 2 WLR 322; *Albion Hotel (Freshwater) Ltd v Silva and Another* [2002] IRLR 200 and *The Country Council of Hereford and Worcester v Neale* [1986] ICR 471.

[14] Learned counsel for the defendants in asking this court to dismiss the plaintiffs' appeal, submitted that the fundamental factual basis of the plaintiffs' claim in the High Court had not been proven. It was submitted that the plaintiffs had failed to prove that:

(a) Ungku Abdullah and/or his beneficiaries still remained as owners of the said property even after the state government paid RM8,000 to the chettiar for the land in 1895.

(b) Ungku Abdullah and/or his beneficiaries remained as the owner(s) of the land for the next 55 years prior to the purported 'wrongful acquisition' in 1950. Without these facts being first proven by the plaintiffs, the declaratory relief being sought by the plaintiffs in the High Court cannot be granted.

In a nutshell the defendants' case is that there was no proof that Ungku Abdullah remained the owner of the said property. We were asked to dismiss the appeal without us having to answer the questions posed.

FINDINGS

[15] Let us first deal with the issue of breach of natural justice and procedural unfairness, on the part of the Court of Appeal, as raised by learned counsel for the plaintiffs. We have, read and re-read the judgment of the Court of Appeal and we find that the so called 'some other issues' dealt with by the Court of Appeal were in fact related to the three main issues decided by the High Court. What the Court of Appeal had done was that it did its own research and produced its own authorities to support its reasoning in relation to the three issues decided by the learned High Court judge. We are of the view that there is nothing wrong with that. In fact, judges are encouraged to do their own

research,to supplement the submissions and authorities submitted by counsel. Thus, the issue of breach of the rule of natural justice and procedural fairness is really a non-issue.

[16] The main issue in this appeal is whether the plaintiffs' claim was time barred. The learned High Court judge held that since the acquisition was null and void, the limitation did not set in and thus the claim was not time barred. With respect, we disagree. Like the Court of Appeal, we are of the view that the learned High Court judge had erred in holding that the acquisition of the said property was null and void.

[17] In this case, the plaintiffs relied on a letter dated 29 June 1998 from the State Legal Advisor, Johor and the result of a search of the said property dated 28 May 1998 to claim that the said property had been unlawfully acquired by the state government. In the letter, the state legal advisor had made reference to s 54 of the 1950 Enactment. But we are of the view that the section was invoked by the State Legal Advisor Johor for the purposes of rectification of the title in order for the said property to be vested with the state government. It was not the act of acquisition of the said property as is generally understood under the Land Acquisition Act 1952. Thus, the reference to s 54 of the 1950 Enactment by the plaintiffs to ground their claim was wrong. The letter of the state legal advisor on 29 June 1998 was in our considered view taken out of context.

[18] It is clear on the facts of this case that the said property was restored to the state government, when the said property was charged by Ungku Abdullah to the chettiar and was redeemed on the instruction of His Royal Highness, the Sultan of Johor then. That happened sometime in 1895. We are of the view that in charging the said property, Ungku Abdullah had indirectly appointed the chettiar to be his attorney and having the authority to sell the said property if the debt was not paid. Therefore, when the state government settled the debt, the said property had lawfully become the property of the state government.

[19] It follows that if Ungku Abdullah's beneficiaries are contending that the said property was redeemed by the state government without the consent of the beneficiaries, it would be up to Ungku Abdullah's beneficiaries to set aside the redemption then. They failed to do so, and therefore, in so far as the state government is concerned, the redemption was never set aside. The consequence of that would be, the state government became the owner of the said property. The redemption took place in 1895. It was more than 115 years ago and we are of the view that it is too late now for the plaintiffs as beneficiaries of Ungku Abdullah to challenge redemption of the said property by the state government. Surely in this case limitation has set in.

[20] Based on the above findings, we are of the view that all the questions in

A the manner drafted need not be answered. The questions pre-suppose that there was an act which was a nullity. The onus is on the plaintiffs to first show that the act of the state government in redeeming the said property in 1895 was wrong in law and in breach of the laws in force at the material time. The plaintiffs had failed to do so. Thus, there is no basis for the learned High Court B judge to hold that the transfer of the said property by way of redemption by the state government was a nullity. It follows that his finding that 'time remained at large and the law of limitation was inapplicable and it cannot governed the outcome of the present case at all' cannot be supported.

C **[21]** In *Terengganu Forest Product Sdn Bhd & Anor v Cosco Container Lines Co Ltd & Anor and other applications* [2011] 1 MLJ 25; [2011] 1 CLJ 51, Chief Justice Zaki Tun Azmi had said: 'But in my opinion the appellate panel is not prevented from granting leave to amend the question allowed by the leave panel or even to add in new question in order to achieve the end of justice.' We D would like to add that the appellate panel after hearing the full appeal is also not prevented from not answering the questions posed by the leave panel. This is especially so, as in this case, where after hearing full arguments, the answers to the legal questions posed are not related to the facts of the case on appeal and to do so would be merely doing an academic exercise. The questions posed E pre-suppose the redemption of the said property was improper or unlawful and the 1950 Enactment was the applicable law. But as we have pointed earlier the applicable law is not the 1950 Enactment.

CONCLUSION

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[22] In the result, the appeal is dismissed with costs. We will now invite counsel to address us on the issue of costs.

Appeal dismissed with costs.

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Reported by Ashok Kumar

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